ATTACHMENT A

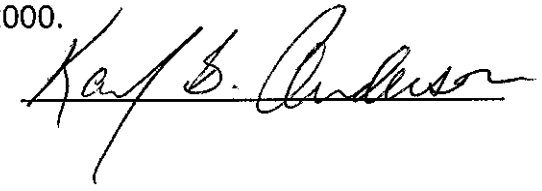
CERTIFICATE OF GOOD STANDING FOR

AMEREN MARKETING COMPANY

ATTACHMENT B

NOTICE TO PUBLIC UTILITIES

Karl Anderson, an attorney for Ameren Energy Marketing Company ("AEMC"), hereby certifies that he caused notice of AEMC's intent to serve in utilities' service territories by serving a copy of this Application on each of the following utilities by Federal Express delivery this 7th day of July, 2000.



Central Illinois Light Company

Central Illinois Public Service Company

Commonwealth Edison Company

Illinois Power Company

Interstate Power Company

MidAmerican Energy Company

Mt. Carmel Public Utility Company

South Beloit Water Gas and Electric Company

Union Electric Company

ATTACHMENT C

COMPLIANCE WITH 220 ILCS 5/16-115(D)(5)

Section 16-115(d)(5) of the Act establishes a reciprocity condition for ARES certification. Where the Commission determines that this condition, and all other conditions under Section 16-115 and applicable rules, are met, certification must be granted. The Section sets forth the condition as follows:

> if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may; be, provides delivery services to the electric utility or utilities in whose service areas or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility . . . .

Reciprocity Elements and Statutory Construction Requirements

For this section to apply to Applicant,

1. The applicant or its corporate affiliates must own or control facilities for transmission or distribution of service to end users within a *defined geographic area*; and

2. The *electric utilities* in whose service areas Applicant proposes to offer service must be able to *physically and economically* deliver energy and power to the geographical service area of Applicant and/or its corporate affiliates.

Where these two statutory criteria apply to an applicant, the applicant will be deemed in compliance with the reciprocity requirement if the Commission finds that

The applicant or its affiliates provide delivery services *reasonably comparable* to the delivery services offered by the utilities in whose service areas the applicant proposes to offer services.

The Commission is ultimately charged to determine (1) what constitutes physical and economical delivery; (2) what constitutes a "defined geographic area"; and (3) whether the reciprocal delivery services are "reasonably comparable". The statute contains no definition of "reasonably comparable" nor guidelines to assist the Commission in its determination of comparability, the physical and economical delivery of power or defined geographic area. Consequently, the Commission's factual determination in a particular case inherently involves a statutory interpretation of these terms.

Reciprocity provisions generally risk being unconstitutional as an impermissible burden on interstate commerce. [1] Pursuant to statutory construction principles, this Commission is obligated to interpret and apply the statute in such a manner to preserve its constitutionality.[2] More significantly, however, preserving the constitutionality of this particular provision is necessitated because the Customer Choice Law contains a non-severability clause.[3] If Section 16-115 is held unconstitutional, the entire Customer

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[1] The Commerce Clause of the United States Constitution, Art. I, §8, cl. 3, directly limits the power of the States to discriminate against interstate commerce. The clause prohibits action by a state designed to benefit in-state economic interests by burdening out-of-state competitors, either directly or by denying them advantages that are available to in-state interests. Such statutes or regulations that clearly discriminate against interstate commerce are routinely struck down, unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism. *New Energy Co. v. Limbach*, 486 U.S. 209 (1988). The Supreme Court has distinguished between "state statutes that burden interstate transactions only incidentally, and those that affirmatively discriminate against such transactions." *Maine v. Taylor*, 477 U.S. 131 (1986). In particular, statutes or rules containing strict reciprocity provisions, those that bar transactions with other states unless those states permit similar transactions with the enacting state, are "affirmatively discriminatory." The Supreme Court has found in several relatively recent cases that reciprocity provisions "unduly burden the free flow of interstate commerce." *See, e.g., Great Atlantic & Pacific Tea Co. V. Cottrell,* 424 U.S. 366 (1976); *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982); *New Energy Co. v. Limbach,* 486 U.S. 269 (1988).

[2] See, e.g., Lee v. Nationwide Cassel, L.P., 174 Ill. 2d 540, 675 N.E.2d 599 (1996); Arnolt v. City of Highland Park, 52 Ill. 2d 27, 282 N.E.2d 144 (1972); Northwest Airlines, Inc. v. Dept. of Revenue, 295 Ill. App. 3d 889, 692 N.E.2d 1264 (1st Dist. 1998) (interpretation that renders statute constitutional should be discarded); Village of Niles v. City of Chicago, 82 Ill. App. 3d 60 (1st Dist. 1980) ("fundamental that a statute be read in consonance with constitutional principles")

[3] Section 15 of P.A. 90-0561 provides that, "If any provision added by this amendatory Act of 1997 is held invalid, this entire amendatory Act of 1997 shall be deemed invalid. . . ."

Choice Law – and with it, the currently unfolding transition to competitive retail electric markets – risks being struck down.

The Commission should further interpret and apply the provision to give meaning to the legislative intent of the statute. The Commission's determination should take care to assure that the results produced are not directly at odds with its own and the General Assembly's clearly expressed policies. The Commission and the General Assembly have both clearly expressed their intent that the wires and the generation/marketing functions of Illinois electric utilities be separated. Consistent with their policy promoting functional separation, this Commission approved, in Docket No. 99-0398, the transfer of all wholesale and retail marketing responsibility to Applicant and all generation responsibility to another affiliate, Ameren Energy Generation Company, resulting in AmerenCIPS operating solely as a transmission and distribution company.

If Applicant were unable to obtain certification as an ARES, its corporate purpose—to serve the marketing function -- would be eliminated. Ameren would have to choose from two alternative courses of action: (1) stay out of the competitive retail market; or (2) return the Illinois competitive retail marketing function to AmerenCIPS. The first alternative would mean one fewer competitor in the Illinois market contrary to the legislative and regulatory policy to foster competition. The second alternative would reunite the wires and retail marketing functions, turning inside out Ameren's corporate restructuring which the Commission only recently approved contrary to its functional separation policy. However, under a proper interpretation and application of Section 16-115(d)(5), Applicant shall have met the reciprocity condition to qualify for ARES certification.

Criteria Subjecting Applicant to the Reciprocity Condition:

The first criterion to determine whether the reciprocity condition attaches to Applicant's certification is applicable to Applicant. Applicant has two corporate affiliates, Union Electric Company, d/b/a/ AmerenUE, and Central Illinois Public Service Company, d/b/a AmerenCIPS, that own transmission and distribution facilities that serve retail end users. However, the second criterion to be met before reciprocity attaches as a condition of certification is not applicable to Applicant as a practical matter. Neither ComEd nor Illinois Power, which have the two largest electric service territories in the state and in whose service areas Applicant might consider offering retail sales service, are in a position to physically and economically deliver energy and power to AmerenUE or AmerenCIPS' service areas.

The Commission's determination as to the second criterion's applicability to Applicant should be limited to the facts involving only the reciprocating electric utilities. The Section specifically states that the "*electric utility*" must be able to "physically and economically" deliver power to the service areas of the Applicant or its corporate affiliate(s). The statute does not state that the "*electric utility or its affiliates* must be able to deliver power."[4] "Electric utility" is defined in the Customer Choice Law as a "public utility . . . that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service territory." Consequently, only ComEd, and not Unicom, and only IP, and not Dynegy, should be considered in the Commission's factual determination. Even read at its broadest, Section 16-115(d)(5) does not require Applicant's affiliates to offer delivery services – reasonably comparable or otherwise – to ComEd or IP's affiliates. The reciprocating obligation is to the "electric utility that offers delivery services." ComEd and IP's ARES affiliates are not electric utilities; they do not offer delivery services.

ComEd has informed the Commission unequivocally that it is exiting the generation and marketing business. ComEd has sold all of its fossil generation to third parties. ComEd has also notified the Commission of its intent to transfer (i) its remaining generation (i.e. its nuclear plants); (ii) its contractual rights under wholesales supply contract; and (iii) its wholesale marketing business to a "genco" affiliate upon or shortly after the closing of the Unicom-PECO merger, which is expected by fall of this year. Additionally, ComEd has already ceded retail marketing to its affiliated ARES, Unicom Energy. All marketing functions will be handled by affiliates. Consequently, ComEd has no generation physically interconnected with any transmission or distribution facilities within Illinois that could be delivered to either service areas of Applicant's corporate affiliates. Where ComEd has no generation resources at all at this time, the Commission cannot affirmatively find at this time that power could be economically delivered by ComEd to either of AmerenCIPS or AmerenUE's service areas.

Illinois Power is similarly not positioned to act as an out-of-state retail marketer. IP has sold or transferred all of its generation. IP sold the Clinton unit to AmerGen and transferred all of its remaining generation to an affiliate, WESCO. IP's affiliate, Dynegy Marketing, has been certificated as an ARES in Illinois. Additionally, in presenting the WESCO asset transfer to the Commission, IP did not forecast any competitive retail sales other than those it is required to make under its Power Purchase Option tariff. Further, IP emphasized to the Commission that its agreement with WESCO incentivizes IP to reduce its purchases from WESCO when its service area load decreases.

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[4] Under statutory construction principles, the omission of any reference to the electric utility's affiliate should be considered as intentional, particularly where the legislators have specifically included it elsewhere. See, e.g., Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill.2d 141, 688 N.E.2d 90 (1977); Baker v. Miller, *159 Ill.2d 249, 636 N.E.2d 551 (1994).*

Accordingly, IP has made clear that it does not envision an active in-state (much less out-of-state) retail marketing role for itself, and it is reasonable for the Commission to conclude that IP will not be delivering power and energy to end users in Missouri.

The Commission must make an affirmative finding based on factual evidence verified in the application or other information submitted by an applicant. The statute provides that the Commission "shall grant the application for a certificate of service authority if it *makes the findings* set forth in this subsection . . ." The necessary findings include that "electric power and energy *can be* physically and economically delivered . . ." If it does not have factual evidence supporting that power can be physically and economically delivered, then it cannot make the required finding. There is no factual evidence to support a finding that either ComEd or IP are able, at the time of this filing, economically or physically to deliver power to AmerenCIPS or AmerenUE. Rather, the current factual circumstances of these two utilities as set forth above evidence a contrary finding that would support Applicant's application.

Comparable Delivery Service Requirement

Even should the reciprocity condition attach to Applicant's ARES certification under the two criterion discussed above, Applicant satisfies the condition. Both of its affiliate electric utilities, AmerenCIPS and AmerenUE's delivery services are available to all eligible retail customers under Illinois Customer Choice law and therefore should be deemed "comparable." An applicant must certify in its application that, as an ARES, it would "only provide service to retail customers in an electric utility's service area that are eligible to take delivery services under this Act." 220 ILCS 5/16-115(d)(5). Where an ARES is restricted by the statute to provide service only to eligible retail customers in a non-affiliated utility's service area, the reciprocating obligation of the ARES and its affiliated utilities to offer comparable delivery services should be determined based on whether delivery services are available to any and all eligible retail customers on their distribution facilities. AmerenCIPS owns transmission and distribution facilities in Illinois on which it provides delivery services to its eligible Illinois customers. AmerenUE owns transmission and distribution services in Missouri and Illinois on which it provides delivery services to its eligible Illinois customers. This should be sufficient for a finding of comparability. Combined, AmerenCIPS and AmerenUE have made available over 3000 MW of their retail load available to competitive services. That is a substantial commitment to delivery services – and to the competitive objective of the statute and the Commission's regulations.

Further, the geographic area, under the facts of this case, should be defined in terms of the total integrated service area and then evaluated according to the delivery services offered to any and all eligible retail customers on the integrated system. The criteria discussed earlier require reciprocity where the Applicant's corporate affiliates owns or controls facilities for the transmission and distribution of electricity to end-users within a "defined geographic area." Since the merger of AmerenCIPS and AmerenUE, their systems have been operated as one integrated system. This Commission approved a Joint Dispatch Agreement that provides for such integrated operation. The geographic area should be defined, consequently, as one integrated system for determining comparable delivery services.

For the Commission to determine the comparability requirement by distinguishing two geographic areas drawn according to state boundaries would render the statute facially unconstitutional. The statute on its face requires only reciprocity from the applicant's affiliates, wherever they are located. The Commission should avoid an interpretation and application of the reciprocity provision that would jeopardize the statute's constitutional status by drawing state boundaries within service territories or, rather, by defining "geographic areas" along state lines. Such result would create an impermissible burden on interstate commerce with no legitimate local purpose. Illinois has no local interest in seeing Missouri customers benefit from competition in the retail electric market. The only arguable interests Illinois would have in such a requirement would be to (1) open up "foreign" markets in which Illinois electric utilities can compete, and (2) keeping foreign competitors outs. Neither is a legitimate local interest. Both involve interstate commerce, which the State may not unreasonably burden in violation of the Constitution.

The result of requiring comparable delivery services on the Missouri portion of the Ameren's integrated system would be particularly absurd and goes beyond the legitimate interest of Illinois. It would provide Midamerican and the Alliant companies retail access in the Missouri portion of the Ameren control area, while not providing necessarily comparable access to those companies' retail service areas. What local purpose would be served by requiring Applicant's affiliates to offer delivery services in Missouri to the Alliant companies, for example, when the Alliant system does not offer delivery services to Applicant (or any other market participant) in the Wisconsin and Iowa portions of that system.

Applicant has satisfied the requirements of Section 16-115(d)(5). Properly interpreted, that Section does not require Applicant's affiliates to offer delivery services to any greater extent than they are under the terms of the Customer Choice Law. To find otherwise would be to frustrate the goals of both the General Assembly and the Commission, and to unconstitutionally deny Applicant access to the Illinois retail market, when it has satisfied all other requirements for certification.